

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.710 OF 2007

Shri.Umesh Himmatlal Gandhi ..Petitioner

Vs.

State of Maharashtra ..Respondents

...

Mr.A.P.Mundargi Advocate with Mr.Amol Patankar for
Petitioner
Mrs.A.S.Pai APP for State

...

CORAM: R.M.S.KHANDEPARKAR, AND
SMT.V.K.TAHILRAMANI, JJ.

DATE : JULY 16, 2007

P.C.:

1. Heard learned advocate for the Petitioner and the learned APP for the State.

2. The Petitioner challenges the order dated 30th March, 2007 passed by the Metropolitan Magistrate, 26th Court, Borivali, Mumbai, in C.C. No.2368/PW/2006. By the impugned order, the application filed by the Petitioner for further investigation into the matter in exercise of powers

under Section 173 (8) of the Code of Criminal Procedure, has been rejected. Undisputedly, the said application is filed solely on the basis of certain allegations made by the Petitioner in the course of recording of his statement before the Magistrate. Admittedly, the Petitioner had not disclosed those allegations in the FIR. Considering the fact that said allegations to be a clear cut case of improvement in the complaint filed by the Petitioner, the Magistrate has refused to exercise powers under Section 173 (8) of the Code of Criminal Procedure. Merely because, the Petitioner had sought to induct 3rd person in addition to the accused who has already been sought to be prosecuted in the matter, and that too in absence of any reference to such person in the FIR, no fault can be found with the impugned order. Needless to say that this would not prevent the Magistrate from exercising powers in case cogent material is brought on record warranting exercise of such powers. However, on mere allegations in the statement before the Court without any justifying evidence in support of such allegations, no fault can be found with the impugned order, whereby the learned Magistrate has refused to

exercise powers under Section 173 (8) of the Code of Criminal Procedure. There being no case made out for interference with the impugned order, petition fails and is rejected.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI, J.]